



City of Tualatin

www.tualatinoregon.gov

OFFICIAL

TUALATIN PLANNING COMMISSION -

MINUTES OF February 19, 2015

TPC MEMBERS PRESENT:

Alan Aplin
Bill Beers
Adam Butts
Jeff DeHaan
Cameron Grile
Jan Guinta

STAFF PRESENT:

Aquilla Hurd-Ravich
Cindy Hahn

TPC MEMBER(S) ABSENT:

GUESTS: Cathy Holland, Linda Moholt, Jonathan Crane

1. CALL TO ORDER AND ROLL CALL

Alan Aplin, Chair, called the meeting to order at 6:31 pm; roll call was taken.

2. APPROVAL OF MINUTES

Mr. Aplin asked for review and approval of the January 15, 2015 TPC minutes.

MOTION by Mr. Griles, SECONDED by Mr. Beers to approve the January 15, 2015 TPC meeting minutes as written. MOTION PASSED (5-1 with Beers dissenting).

3. COMMUNICATION FROM THE PUBLIC (NOT ON THE AGENDA)

None.

4. ACTION ITEMS

A. 2014 Annual Report of the Tualatin Planning Commission

Aquilla Hurd-Ravich, Planning Manager, stated that the Report is required yearly, per the Tualatin Municipal Code (TMC). It refers to activities of the Planning Commission regarding land use actions. 2014 was the first year for TPC to make decisions on quasi-judicial matters. Items that came before TPC for review included: two quasi-judicial (height of a cell tower and a sign variance), implementing Linking Tualatin, and a Plan Map amendment that changed two properties to High Density Residential. These items involved varying levels of public involvement.

The Annual Report also talks about Urban Renewal Blocks 28 & 29 and the

These minutes are not verbatim. The meeting was recorded, and copies of the recording are retained for a period of one year from the date of the meeting and are available upon request.

announcement of a City Task Force on Aging. Ms. Hurd-Ravich noted that the report also includes topics of discussion that came before TPC, which included: Basalt Creek, Southwest Corridor, Metro, TriMet, and the Capital Improvement Plan (this may become an annual agenda item for TPC).

Ms. Hurd-Ravich said the action for TPC tonight is to make a recommendation on the Annual Report; then Mr. Aplin will be requested to present the report to Council.

Mr. Aplin asked the Commissioners if they thought anything else needed to be included in the report. Commissioner Guinta said she had spoken with Ms. Hurd-Ravich and thought maybe if Mr. Aplin could mention some of the Commission's activities during 2014, in addition to other committees; use it as sort of an opportunity to "brag" before Council.

MOTION by Mr. Grile; SECONDED by Mr. DeHaan, to recommend acceptance of the Annual Report and present it to Council. MOTION PASSED (6-0).

B. Consideration to Amend the Tualatin Development Code (TDC) Chapters 31, 60, 61, 64, and a new Chapter 80 to Establish Reasonable Time, Place, and Manner Regulations for Marijuana Facilities. Plan Text Amendment 15-01 is a legislative matter.

Cindy Hahn, Associate Planner, presented the staff report for TPC's consideration of a Plan Text Amendment. Ms. Hahn's presentation included a PowerPoint presentation. She gave a brief background, noting that 1) Council provided direction to staff at the January 26, 2015 Work Session, 2) Staff sent DLCD notice of the proposed code changes January 30, 2015; and 3) TPC recommendation will go to Council on February 23, 2015.

Ms. Hahn stated that the proposed PTA will make changes to several TDC chapters, including proposed new language in Chapter 31 to include definitions for: marijuana, marijuana-edible, marijuana extract, marijuana facilities, marijuana-homegrown. Adding marijuana facilities as a permitted use in ML, MG, and MBP (Chapter 60, Chapter 61, and Chapter 64). The new Chapter 80 Marijuana Facility Regulations will address marijuana facilities, edible marijuana, butane extraction, and homegrown marijuana.

Ms. Hahn then reviewed the draft code - Development standards, which include language regarding hours of operation, location, outdoor storage, odors, where facilities would be allowed, buffers, co-location restrictions, and size of facilities. Also included are standards regarding edible marijuana, butane extraction prohibition, and homegrown marijuana standards.

Ms. Hahn noted a correction to the title on the map depicting the buffer distances from residential and schools; it should read: Potential Marijuana Facilities Zoning (not Potential Medical Marijuana Zoning).

The next steps are: February – draft code language, March – public hearing and ordinance adoption, and May – ordinance to take effect. Tonight the hope is to get a recommendation from TPC to take to the February 23 Council meeting.

Audience Comments

Cathy Holland, resident of Tualatin and volunteer with the Commercial CIO. This is not a position of the Commercial CIO. We do contact businesses in the Tualatin area and ask for feedback. Two current businesses do business with marijuana entities. She said they wanted amendments made. Ms. Hurd-Ravich noted that staff needs a recommendation from TPC tonight to move forward, but can take amendment information. In their view, this proposed TDC amendment will result in a ban.

She said the yellow area consists of: wetlands, buildings that have FDIC financing (FDIC won't loan if space to be used by marijuana facilities), owner/occupied buildings, and vacant buildings (which are large square footage). Owners of the large buildings aren't going to rent to tenants that only need small square footage. In their opinion, the City's proposed language is too prohibitive.

Ms. Holland went on to question what this means – it means it is a ban. If it is a ban, anyone with standing can go to LUBA. She said they suggest that the City revisit the 3000-ft setbacks. If the City makes it difficult to buy marijuana, then people will grow at home and businesses that sell grow lights, fertilizer, etc. will benefit.

They suggested a 1,000 ft buffer from residential. Also, lower the 3,000 feet between facilities to 1,000 feet between. Typically you can't rent from the large national property management companies because they are seeking firms that desire that large square footage. Locally owned buildings would most likely be a better possibility for space rental. You could have the buffer 1,000 feet from parks, 1,000 feet between dispensaries, and 1,000 feet from residential. This would still keep them within industrial, but provide more opportunity to find locations where they can rent.

Ms. Holland said they went through the code and gave her suggested amendments. Besides the restriction on closest property, they have an issue with hours of operation. Dispensaries and grow operations have been combined. Grow operations (legal in Oregon) can operate 24 hrs a day/7 days a week. They cannot be subject to this language or it would be a ban. Grow operations are not open to the public.

Mr. DeHaan asked who "they" were. Ms. Holland clarified that "they" are two business people who are currently working with marijuana businesses (a commercial real estate broker and an attorney). They each have clients that are involved in the

marijuana business. These two people are in the Tualatin Commercial CIO. They put her in touch with a Medford person currently in the marijuana business.

Ms. Guinta asked how they felt about the 3,000 square foot space size limit, as she imagined that grow operations would typically be much larger than that. Ms. Holland said that the attorney said he had two clients that have 10,000 square foot operations. It was noted that Oregon Health Authority (OHA) doesn't tie licensing to facility square footage; it is tied to patient numbers. Ms. Guinta asked if growers need more than 3,000 square ft; Ms. Holland noted that the 10,000 square ft facility she just referred to was actually shared by four growers.

Ms. Holland said the attorney she spoke with had brought up the issue of equal protection under the 14th Amendment. He said that because the City of Tualatin doesn't treat liquor stores the same as marijuana facilities, there could be cause for action against the City. Also, the area the City is proposing for use doesn't have bus service and many users need bus service; that could also be considered in an action against the City.

Linda Moholt, President, Tualatin Chamber of Commerce, said the Chamber is just monitoring the situation at this point, they haven't yet taken a position. Several people questioned putting retail space in industrial space. Does that fit in the overlay district? What about the new area on SW 112th (Hedges Development) - can sandwich or coffee shops locate there; would retail dispensaries fit in that area?

Ms. Moholt asked if liquor stores are considered retail; Ms. Hurd-Ravich replied that Central Commercial Planning District called out for that type of store. She asked why they shouldn't be considered as retail. Ms. Guinta said she felt Ms. Moholt had a valid question – do you want the retail outlet of medical marijuana to be allowed in commercial areas in industrial zones. Ms. Moholt said no, but several people have expressed concerns regarding where it feels incongruent. Maybe they would fit in the new overlay area. Could that new overlay take some angst off of both sides. Ms. Guinta stated she supports the overlay in industrial area; is that viable? Mr. Aplin said industrial lands would prefer not to have their lands crossed over into retail; they may be adverse to that. Ms. Hurd-Ravich noted there are different ways to have retail uses in industrial, Industrial Overlay specific to Franklin Business Park has very specific uses that can go in there: food, convenience stores, office. It is a very limited group of uses.

The Plan Text Amendment adopted within the past year (in association with Linking Tualatin) allows commercial to have small (5,000 square ft or less) retail, the rest has to be industrial. The point of both of these code pieces was to allow employees/employers a way to access services without having to go into downtown Tualatin. If TPC would like the lists of acceptable uses expanded, you can request the allowed retail in these industrial area be expanded. Ms. Hurd-Ravich said there is some

language that allows certain retail to occur with a square footage cap of 5,000 square feet. Brief discussion followed.

Mr. Aplin asked if anyone else wished to comment. Jonathan Crane, *Tualatin Life*, inquired as to what the math was in terms of minimum distance between facilities. It seems like a very confined space where allowable. How many facilities could possibly locate in that area? Mr. Beers said if optimal, maybe two. Ms. Hahn said staff had tested measurements and potentially three could fit in the allowable area. Mr. Crane asked if anyone looked at revenues, would it be a tax benefit; would it be more feasible to figure out a way to have three or four. If there is a tax base we aren't missing, if we are going to have an area; this almost seems it is set up to fail – so few options. If you made it a larger area and could fit four or five facilities, would that benefit the community tax-wise (tax base/revenue).

Mr. Aplin said it looked like the map was developed with offsets taken into consideration; Ms. Hahn replied that was true. Mr. Beers stated that he recommends 1,000 ft.; Ms. Guinta said she supports 3,000 ft. Mr. Grile asked how the 3,000 ft. buffer came about; Ms. Hurd-Ravich replied that came from discussion with Council. Ms. Guinta noted they had done 1,000 ft, 2,000 ft, and 3,000 ft to see the affects. The decision was made for the 3000 ft buffer.

Mr. Aplin stated there is good information to support it is a very restricted area in the City; that is by design. He understands there may not be buildings that meet needs due to size and that there are financial institutions that won't deal with them if it is a marijuana business. He went on to say that he is not in favor of making it more accessible by compromising offsets from schools and parks. He shares concerns about how it may set up a business to fail; no idea of tax revenue and cost of managing, and if ever a surplus of funds from that. Mr. Grile noted how Ms. Holland felt the result could be a ban; due to restrictions – could it be considered as such. Ms. Hurd-Ravich said she can do more checking on that; but if we set it up, an owner has a right to chose if they wish to rent to that type of business. If able to say legally a ban it will be tossed back at us. Ms. Hurd-Ravich stated they worked closely with the City Attorney, they will go back to him for further consultation.

Mr. Crane said if all “perfect”, you could squeeze three facilities in the area. Couldn't someone then figure if they located in the middle that could preclude anyone else from locating in the allowable zone; strategic locations would make it impossible for any competitors. Language could be changed to say no more than three facilities allowed in the designated area.

Mr. Aplin expressed concerns about Ms. Holland's comment regarding folks turning to home grown and hours of operations. Ms. Guinta said that according to OHA, they allow medical marijuana card holders to have four plants in their home. She noted Mr. Grile had previously expressed his concern for common wall dwellings in relation to home grown marijuana.

A question was asked about whether or not the proposed regulations were consistent with the Oregon Health Authority and regulations regarding home grow operations. Ms. Hurd-Ravich said she doesn't think this code will affect people who are growing with OHA card. Ms. Guinta thought definitions included OHA requirements; Ms. Hurd-Ravich said she would double-check this.

Mr. Beers asked for language to clarify that proposed standards only apply to home grow operations that are outside of a home. Ms. Hurd-Ravich stated she had asked about common wall dwellings and was told it is very difficult to regulate between lease/owner line. A question to follow up on would be any conflicts of our language. She said the City can put in a clarifying statement if growing in your home these stipulations are to be followed; if growing outside, then these are the rules to follow.

Mr. Beers asked about the presentation slides—co-location of grow facility and dispensaries not allowed; is it possible to co-locate a medical dispensary and a recreational facility? Our code language doesn't seem to differentiate. If selling to both medical customers and recreational customers, can you have just the one store and sell both out of the same facility? Can one proprietor serve both OHA and OLCC recreational and have both in one.

Mr. Beers asked if it were Council's intent to have set hours for all facilities or just retail; Ms. Hurd-Ravich replied for all facilities. Mr. Beers then asked about butane extraction. Ms. Hahn said she knows the machine for extraction is very expensive. You have to be a commercial operation to want to do it. Prime beneficiary would be children with epilepsy. Ms. Guinta asked about butane and wondered if we might want to use a more general term as techniques may change in the future; and six months from now there may be something equally as explosive and dangerous.,

Mr. Grile said he doesn't know how the City can regulate that. Ms. Hurd-Ravich said 80.200, Definitions, specifically mentions butane extraction. Mr. Grile asked if it is the act that is not allowed or the extract; Ms. Hurd-Ravich clarified the act is not allowed. She said that is what is stated in the code, it applies to planning districts where allowed.

Mr. Butts said when Measure 91 came out – by definition the City will prohibit people from growing fig trees and mulberry plants as marijuana is included in the same family – clarification/correction needs to be made. Cannabis is now in its own family – *Cannabaceae*.

Mr. Butts asked how we can regulate packaging that is attractive to children. How would that be possible to regulate as it can be very subjective. One option might be to take out the wording "packaging that is made attractive to children"; and say "can't have candy-type packaging".

Ms. Hurd-Ravich gave some background on the packaging issue. She said there had been much discussion at a Council work session at which the Police Chief had expressed great concern. Mr. Butts suggested using language that says “packaging that imitates candy is prohibited”.

Mr. Beers asked what “other objectionable odors” would be. Ms. Hurd-Ravich said her information is that during production of extract there can be odors that are very “chemical-like” and offensive to most.

Mr. Aplin said we now have a draft that is somewhat the distillation of Council’s recommendations for distances, we have a couple of issues brought up regarding homegrown and how to handle the effective situation of location of facilities. He then asked if there were any other things if going to make a recommendation with any caveats.

Ms. Guinta said she has four items:

1. Allow 24/7 hours of operation for grow facilities.
2. Allow medical dispensary in Industrial Business Park Overlay District and small scale mixed uses.
3. Reduce separation between facilities from 2,000 ft to 1,000 ft.
4. Clarify inconsistencies in analysis & findings of PTA and Chapter 80.

Other items noted include:

- Look at family names and make definitions accurate (compare to Federal Government taxonomy).
- Making some changes in 80.100(4) to packaging that imitates candy – needs to be prohibited.
- Add clarifying language to homegrown section 80.300 – clarifying if marijuana grown outside, following these regulations (what is already listed).

Mr. Aplin had other considerations including asking the Council to evaluate the spatial limitations in the area and consider only allowing 3 facilities. An additional consideration was to apply hours of operation differently for retail facilities versus growing operations.

Ms. Guinta added that the butain extraction definition should be considered for expansion. .

Mr. Aplin responded to Ms. Guinta’s comment about the overlay districts. He was concerned how many other places would that open it up to if additional language were added. Ms. Guinta responded that specific uses would have to be added to the overlay. If adopting this language in Hedges area, marijuana would go on the list and could be allowed. Mr. Aplin asked if it falls in the yellow area; Ms. Hurd-Ravich said no.

Mr. Beers stated he feels 3,000 ft buffer is too restrictive; would like to discuss reducing to 1,000 ft.

Mr. DeHaan said he has four comments:

1. Has this language gone over in great detail by the City Attorney?
2. Not in favor of allowing operation ours 24 hours a day seven days a week, and unless it is clarified that grow operations only are not restricted but retail and operating hours are restricted to 10am-8pm.
3. If the code language turns out to be a hindrance to business it can be amended at that time.
4. Supports the restrictive nature at this point in time and not in favor of reducing buffers.

Mr. Grile asked if the City adopts this PTA and the State sets regulations that are in conflict; will this come back to TPC. Ms. Hurd-Ravich said yes, we would have to then revise our code. If this is the policy direction, have to weigh the risks.

Mr. Aplin said he feels there are definitely emotions associated with these recommendations. Mr. DeHaan indicated because of the legal nature; won't come to vast consensus at tonight's meeting. Discussion followed regarding limitations of how many locations in the yellow area.

Mr. Grile asked how to move forward with what is here regarding packaging – use what is written with these potential options. Possibly just put forth the list of concerns to Council.

Mr. DeHaan asked if the City would have the option to do a Conditional Use to allow more facilities in the permitted area. Ms. Hurd-Ravich replied no, not unless it is written in the code we are adopting. He then asked if a Conditional Use could be added as a possibility; Ms. Hurd-Ravich said the code could be amended in the future. Mr. Aplin noted he felt it would be wise to have one of each type of facility: medical, grow, and recreational.

Ms. Moholt asked about timing/hours of operation – could the City specify hours that growers could deal with their wholesale customers. Mr. Beers noted all are just referred to as marijuana facilities; need to spell out difference for grow facilities.

Brief discussion followed regarding taking the suggestions to Council. Ms. Guinta said she would be willing to vote on a staff recommendation that includes the list of items offered to Council for their consideration.

MOTION by Mr. DeHaan to accept this draft of the PTA as written and offer to Council the list of items for their review and final decision; SECONDED by Ms. Guinta. Passed (6 – 0)

5. COMMUNICATION FROM CITY STAFF

None at this time.

6. FUTURE ACTION ITEMS

Ms. Hurd-Ravich stated that in March they may have update on Blocks 28 & 29 PTA. If ready, there may be a preview on March 19, actual recommendation to Council May 26th. Also, there is another sign variance for Nyberg Rivers – Cabela's banner signs.

7. ANNOUNCEMENTS / PLANNING COMMISSION COMMUNICATION

None.

8. ADJOURNMENT

Mr. Aplin adjourned the meeting at 8:35pm.

Ginny Kirby
Office Coordinator